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# In the Supreme Court of the United States

OCTOBER TERM, 1970.
No. 433.

BROTHERHOOD OF LOCOMOTIVE FIREMEN & ENGINEMEN, *et al.*,

*Petitioners,*

vs.

UNION PACIFIC RAILROAD COMPANY and BROTHERHOOD OF LOCOMOTIVE ENGINEERS,

*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

## BRIEF IN OPPOSITION FOR RESPONDENT BROTHERHOOD OF LOCOMOTIVE ENGINEERS.

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## BRIEF IN OPPOSITION FOR RESPONDENT BROTHERHOOD OF LOCOMOTIVE ENGINEERS.

### OPINION BELOW.

The opinion of the Court of Appeals for the Ninth Circuit is officially reported at 423 F.2d 673. The opinion of the District Court is unreported; however, the oral opinion (Tr. 162-168) and the Order of Preliminary Injunction (R. 89), are printed in the appendix to this brief, *infra*, pp. 13-20.

## QUESTION PRESENTED.

Whether a dispute between two competing railway unions, the Brotherhood of Locomotive Engineers as the craft representative of locomotive engineers, and the Brotherhood of Locomotive Firemen & Enginemen as the craft representative of firemen, concerning which employees of Union Pacific should be assigned certain jobs and work assignments as locomotive engineers, those employees represented by the Engineers' Union under the collective agreement for that craft or those employees represented by the Firemen's Union under the contract for that craft, is a "minor dispute" to be resolved by the National Railroad Adjustment Board pursuant to Section 3 of the Railway Labor Act and is a dispute as to which a threatened strike properly may be enjoined?

## STATEMENT.

The Brotherhood of Locomotive Engineers ("Engineers' Union") has been and is the collective bargaining representative for the craft of locomotive engineers on the Union Pacific, including its Oregon Division. The Brotherhood of Locomotive Firemen & Enginemen ("Firemen's Union") is the bargaining representative for the craft of locomotive firemen, and for no other craft, on that railroad.

For many years, the two unions have been involved in a series of disputes relating to the scope of their respective jurisdictional authority and the power to govern matters pertaining to the craft of locomotive engineers. The instant controversy between them resulted from an agreement entered into by the Engineers' Union and the Union Pacific on February 15, 1968, which implemented a 1952 national five-day work week agreement with the En-

gineers' Union to which the carrier was a party (Ex. 3). By the terms of the former, the six or seven-day work week for yard engineers in the Oregon District was reduced to a work week of five days. The agreement called for a substantial increment in the daily rate of pay for engineers and created additional engineers' positions, which had not formerly existed. It also specified the work assignment priorities for engineers. On this point, the agreement provided, in the event the engineers' extra board was exhausted and a need arose for additional engineers, the carrier would first call regular engineers and then demoted engineers, which procedure followed those practices embodied in other agreements, such as the rotary pool and doubling agreements (Exs. 21, 28). The term "demoted engineers" refers to employees who are engineers but at the time are generally working as firemen. Contrary to the assertion in the Petition (p. 4) that "the Firemen's Union is the certified collective bargaining representative of the demoted engineers," a demoted engineer is covered by the Engineers' agreement when working as an engineer and by the Firemen's agreement when working as a fireman.

When the agreement with the Engineers' Union was posted, the Firemen's Union threatened a strike on the effective date of the agreement, March 1, 1968, contending that the provisions of said agreement conflicted with the Firemen's schedule agreement and took work away from demoted engineers or firemen represented by the Firemen's Union (Tr. 60, 70). On February 26, 1968, Union Pacific submitted the dispute between it and the two organizations to the National Railroad Adjustment Board (Ex. 4).

In view of the imminent strike threat by the Firemen's Union, Union Pacific subsequently filed a complaint

requesting a temporary and preliminary injunction against that conduct (R. 1, 31). The Engineers' Union was permitted to intervene so that it would have an opportunity to protect its agreement (R. 76).

At the hearing in the District Court, the three parties considered the matter to be a minor dispute, and were willing to submit the dispute to a Special Board of Adjustment for speedy arbitration. The Firemen's Union subsequently refused to proceed on that basis.

However, in its pleadings and at the hearing, the Firemen's Union asserted that the Engineers' agreement conflicted with and abrogated certain provisions in the schedule agreement between the carrier and the Firemen's Union. For example, the answer and counterclaim filed by the Firemen's Union states:

> "As hereinafter alleged in this Counterclaim, the foregoing agreement had the purpose and effect of abrogating certain portions of the pre-existing and currently existing schedule agreement between Union Pacific Railroad and the BLF&E * * * Immediately thereafter, and continuing up to the commencement of this litigation, representatives of the BLF&E advised plaintiff that the BLF&E considered Section 8 of the agreement dated February 15, 1968 as being violative of and in conflict with Section 12 of Article 29 in the plaintiff's agreement with the BLF&E dated July 1, 1946. * * *
>
> If paragraph 8 of said agreement of February 15, 1968 is put into effect, it will alter, abrogate, and rescind certain portions of the current schedule agreement between plaintiff and BLF&E." (R. 105-106.)

And at trial, the testimony introduced by the Firemen's Union adhered to the theory of a minor dispute. A vice-president of that union testified: "But to clarify it, we advised the railroad as far back as January 30th, by me to

Mr. Beckley, that it would be a direct violation of the Firemen's Agreement, Article 39, Section XII, if Section VIII of the 5-day work week agreement, as written, went into effect." (Tr. 70.) Its general chairman on the property concerned testified to the same effect: "We feel that the engineers have the right and obligation to work a 5-day work week provided it doesn't conflict with out [sic our] agreement. The only portion I have been able to determine that is in conflict is Section VIII." (Tr. 107.)

After hearing, the District Court found that there was a minor dispute within the meaning of the Railway Labor Act, and granted a preliminary injunction against the strike threatened by the Firemen's Union.

From the order, the Firemen's Union appealed. In affirming the order of the District Court, the Court of Appeals held:

> "It is clear that the dispute involves either a construction of BLF&E's contract or a matter of work-assignment priorities and thus is either a minor dispute with the railroad, *Elgin, Joliet & Eastern Ry. v. Burley*, 325 U.S. 711, 722-24 (1945), or a jurisdictional dispute, essentially with BLE, over which employees shall receive an assignment of certain work. *Transportation-Communication Employees v. Union Pacific R. R.*, 385 U.S. 157 (1966). Under either approach the resolution of the dispute is within the exclusive jurisdiction of the National Railroad Adjustment Board and injunction against strike was proper. *Brotherhood of R.R. Trainmen v. Chicago River & Indiana R.R.*, 353 U.S. 30 (1957); *Switchmen's Union v. Southern Pacific*, 398 F.2d 443 (9th Cir. 1968)."

## REASONS FOR DENYING THE WRIT.

This case raises no important or novel question under the Railway Labor Act, which warrants review by this Court. In fact, the ruling below follows the long standing holdings of the Court in related circumstances.

As acknowledged in the Petition (p. 4), the underlying dispute concerns "the assignment of extra engineering work," the "amount of engineering work for employees represented by the Firemen's Union," and demoted engineers being called to perform "engineering work." The claims now asserted by the Firemen's Union of the bargaining authority for this work, of the right to be heard in bargaining about engineers' work, of the right to be a party to an agreement reached in collective bargaining between the Engineers' Union and the carrier as to work assignments for engineers, and of the invalidity of any contract on that subject reached without its participation is precisely the "jurisdictional dispute" which this Court has held the courts lack jurisdiction to resolve. *Gen'l. Comm., Brot. of Loc. Engineers v. Missouri-K.-T. R. Co.*, 320 U.S. 323 (1943); *Gen'l. Comm., Brot. of Loc. Engineers v. Southern Pacific Co.*, 320 U.S. 338 (1943).

Concerning similar contentions on like matters, the opinion in the last cited case stated:

> "It involves, that is to say, a jurisdictional controversy between two unions. It raises the question whether one collective bargaining agent or the other is the proper representative for the presentation of certain claims to the employer. It involves a determination of the point where the exclusive jurisdiction of one craft ends and where the authority of another craft begins. For the reasons stated in our opinion in the Missouri-Kansas-Texas R. Co. case and in the Switchmen's case, we believe that Congress left the so-

called jurisdictional controversies between unions to agencies or tribunals other than the courts. We see no reason for differentiating this jurisdictional dispute from the others." (320 U.S. at 343-344.)

In amplification of the above principle, the Court has consistently and uniformly held that these jurisdictional disputes over work assignments, where, as here, two unions are claiming the right for their members to jobs or work assignments under the provisions of their respective bargaining agreements or established practices, are committed through Section 3 of the Railway Labor Act, 45 U.S.C. § 153, to the exclusive and primary jurisdiction of the National Railroad Adjustment Board. *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239 (1950); *Order of Ry. Conductors v. Pitney*, 326 U.S. 561 (1946).

In the *Slocum* case, the Court reviewed the legislative history of the 1934 amendments to the Railway Labor Act establishing the Adjustment Board, and stated:

"The paramount importance of having these chosen representatives of railroads and unions adjust grievances and disputes was emphasized by our opinion in *Order of Conductors v. Pitney, supra*. There we held, in a case remarkably similar to the one before us now, that the Federal District Court in its equitable discretion should have refused 'to adjudicate a jurisdictional dispute involving the railroad and two employee accredited bargaining agents * * *.' Our ground for this holding was that the court 'should not have interpreted the contracts' but should have left this question for determination by the Adjustment Board, a congressionally designated agency peculiarly competent in this field. 326 U.S. at 567-568. This reasoning equally supports a denial of power in any court—state as well as federal—to invade the jurisdiction conferred on the Adjustment Board by the Railway Labor Act.'" (339 U.S. 243-244.)

The Petition concedes that the dispute is "over the conflicting claims of two different groups of men to the right to work" (Pet. p. 8), but then attempts to circumvent the above teachings on the basis that the instant dispute over work assignments is principally between it and the carrier (Pet. p. 9). However, this Court rejected like reasoning in *Transportation-Communication Union v. Union Pacific R. Co.*, 385 U.S. 157, 160-161 (1966), saying:

> "On this basis it is quite naturally assumed that a dispute over work assignments is a dispute between an employer and only one union. Thus, it is argued that each collective bargaining agreement is a thing apart from all others and each dispute over work assignments must be decided on the language of a single such agreement considered in isolation from all others.
>
> "We reject this line of reasoning. * * * This is particularly true when the agreement is resorted to for the purpose of settling a jurisdictional dispute over work assignments."

In the above case, as in this controversy, two unions were disputing work assignments with each claiming the work for the members of its craft on the basis of its collective bargaining agreement with the carrier. Rounding out its holdings in *Slocum v. Delaware, L. & W. R. Co.*, 339 U.S. 239 (1950) and *Order of Ry. Conductors v. Pitney*, 326 U.S. 561 (1946), the Court held that the Adjustment Board has exclusive jurisdiction to hear and determine disputes as to which employees should be assigned to perform the work in question and has jurisdiction in its proceedings over all parties to such disputes. See also *Order of Ry. Conductors v. Southern Ry. Co.*, 339 U.S. 255 (1950).

In sum, the teachings of this Court clearly establish that "this statutory grievance procedure is a mandatory,

exclusive and comprehensive system for resolving" these disputes. *Brot. of Loc. Engineers v. Louisville & N. R. Co.*, 373 U.S. 33, 38 (1963). Contrary to the petitioners' assertion that the decision below denied them a vital bargaining tactic preserved by the Norris-LaGuardia Act, it is well established that the remedies created for handling these disputes were intended to provide the opportunity for their peaceful settlement. Referring to the jurisdictional dispute involved in *Slocum v. Delaware, L. & W. R. Co.*, 329 U.S. 239, 242-243, the Court there stated:

> "This type of grievance has long been considered a potent cause of friction leading to strikes. It was to prevent such friction that the 1926 Act provided for creation of various Adjustment Boards by voluntary agreements between carriers and workers. 44 Stat. 578. But this voluntary machinery proved unsatisfactory, and in 1934 Congress, with the support of both unions and railroads, passed an amendment which directly created a national Adjustment Board composed of representatives of railroads and unions. 48 Stat. 1189-1193. The Act thus represents a considered effort on the part of Congress to provide effective and desirable administrative remedies for adjustment of railroad-employee disputes growing out of the interpretation of existing agreements."

Thus, in *Brot. of RR. Trainmen v. Chicago River & I. R. Co.*, 353 U.S. 30 (1957), this Court held that a strike in regard to a minor dispute before the Adjustment Board would be illegal under the Railway Labor Act, for Congress had unequivocally provided for compulsory arbitration in those instances. As to petitioners' argument that the Norris-LaGuardia Act, 29 U.S.C. §§ 101-115, deprived the District Court of jurisdiction to issue an injunction against the threatened strike over this dispute (Pet. p. 9), the Court held "the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes.

There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved." *Id.*, at 40. On this basis, the Court concluded the specific provisions of Section 3 of the Railway Labor Act, 45 U.S.C. § 153, the statutory provision involved herein, take precedence over the more general provisions of the Norris-LaGuardia Act. Later, this rationale was extended to the process following the completion of the procedures of the Adjustment Board, when a union sought to enforce a favorable award through strike action rather than seeking relief through the enforcement procedures set forth in Section 3. *Brot. of Loc. Engineers v. Louisville & N. R. Co.*, 373 U.S. 33 (1963).

Finally, petitioners' reliance on *Sinclair Refining Co. v. Atkinson*, 370 U.S. 195 (1962), is unfounded, the Court having overruled that decision during the last term. *Boys Market, Inc. v. Retail Clerks Union*, U.S. , 26 L. Ed. 2d 199 (1969). In the latter case, the principles elaborated in *Brot. of RR. Trainmen v. Chicago River & I. R. Co.*, 353 U.S. 30 (1957), were found to be equally applicable to strikes in breach of a no-strike obligation under a collective bargaining agreement, containing provisions, enforceable under the Labor-Management Relations Act, 29 U.S.C. § 185(a), for binding arbitration of the grievance dispute concerning which the strike was called. Of particular significance is the following comment as to the policy to be furthered by the process of arbitration under the Railway Labor Act and the reconciliation of the Norris-LaGuardia Act to that policy:

> "As labor organizations grew in strength and developed toward maturity, congressional emphasis shifted from protection of the nascent labor movement to the encouragement of collective bargaining and to administrative techniques for the peaceful resolution

of industrial disputes. This shift in emphasis was accomplished, however, without extensive revision of many of the older enactments, including the anti-injunction section of the Norris-LaGuardia Act. Thus it became the task of the courts to accommodate, to reconcile the older statutes with the more recent ones.

"A leading example of this accommodation process is Brotherhood of RR. Trainmen v. Chicago River & Ind. R. R., 353 U.S. 30 (1957). There we were confronted with a peaceful strike which violated the statutory duty to arbitrate imposed by the Railway Labor Act. The Court concluded that a strike in violation of a statutory arbitration duty was not the type of situation to which the Norris-LaGuardia Act was responsive, that an important federal policy was involved in the peaceful settlement of disputes through the statutorily-mandated arbitration procedure, that this important policy was imperiled if equitable remedies were not available to implement it, and hence that Norris-LaGuardia's policy of nonintervention by the federal courts should yield to the overriding interest in the successful implementation of the arbitration process." (26 L. Ed. 2d, at 210-211.)

The mandatory and exclusive statutory procedures for resolving the instant jurisdictional dispute over work assignments may not be circumvented by means which are not productive of a meaningful and lasting settlement to that dispute. Therefore, the decision of the Court of Appeals, affirming the rulings of the District Court, that the resolution of this dispute is within the exclusive jurisdiction of the Adjustment Board and that the injunction against the strike is proper, correctly follows the above teachings of this Court and is in accordance with the many decisions among the circuit courts, *e.g.*, *Chicago, Milw., St. P. & Pac. R. Co. v. Brot. of Loc. Firemen & Enginemen*, 397 F.2d 541 (7th Cir. 1968), *cert. denied*, 393 U.S. 1022 (1968); *Switchmen's Union v. Southern Pacific Co.*, 398

F.2d 443 (9th Cir. 1968); *New York Central R. Co. v. Brot. of Loc. Firemen & Enginemen*, 355 F.2d 503 (7th Cir. 1968). There are no particular policy considerations in this case, and none have been presented, which require a review by this Court of the overall labor relations philosophy embodied in its prior decisions. Clearly, the question presented does not merit this Court's attention.

## CONCLUSION.

For the foregoing reasons, the petition should be denied.

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# APPENDIX.

## ORAL OPINION OF THE DISTRICT COURT.

(March 2, 1968.)

(Transcript pp. 162-168)

The Court: My function here is a limited one. All the cases indicate that I can just do certain things. I am not to determine the validity of this agreement or decide this dispute. I am required to yield to the expertise of the people in the Railway Adjustment Board or the National Mediation Board.

I am concerned with the national interest. Where a strike is threatened which affects the national interest, I have the privilege and duty of insuring that the national interest will be protected. I think it is clear that if either labor organization is permitted to strike, it will create an intolerable situation; great damage would result, and needed war materials which are being shipped over this line would stop.

I have concluded that this is a proper case to grant an injunction even though I don't like injunctions. An injunction should be issued in unusual cases and only when there is a great danger of irreparable damages. It was with this in mind that I listened to the testimony.

I have looked at the cases from the Court of Appeals and the Supreme Court. They say the status quo shall be maintained when there would be a dislocation of employees from their homes; where there would be loss of jobs and where the changes would have some catastrophic results.

I find that if the contract negotiated in February of 1968, is not permitted to go into effect on March 1, 1968, the additional jobs for firemen are few in number. But if the contract is permitted to go into effect, a number of

men will get increases in salary. I believe the daily rates will increase from $2 to $5. I also find that eight firemen will be put on the regular board as engineers but no firemen will lose his job. Every fireman will have the opportunity to work.

If the firemen ultimately prevail, the Union Pacific Railroad will have to pick up the check. I realize that may require some time. But, this is not a situation in which we will throw a group of firemen out of work. Here firemen will be able to continue to work.

If I maintain the status quo we will prevent some firemen from getting jobs as engineers and a large group of men will be deprived of an increase which they bargained for. The increases are substantial. It is the difference between $26 and $33 according to the rates given me by the man from the Firemen's Union. The highest rate was $30.11. I notice that the new rate will be $36.51.

In view of all these circumstances and trying to weigh the equities, I must enjoin the firemen from striking to prevent this contract from going into effect, without passing upon the validity of that contract. That is why I was critical of Don Richardson's attempt to put in evidence about the contract, because I don't want to decide that issue. I don't want to prejudge the case. I want to let the Railroad Adjustment Board—the people who have the knowledge and expertise—make that determination without any help from me. It may require some time. I understand it will take a year before the firemen can demand that the matter go before a Special Board. I was hoping that we could have solved it some other way but I failed to get the necessary cooperation. Therefore, there is nothing more for me to do. I cannot tell the Board any more.

I share the view that was expressed to me by some firemen and some engineers that Paul Hanlon would be a fool to take this assignment in view of the attitude of these two unions. He is a friend of mine. I know he is a friend of the lawyers. To put a man in that position for a $100 a day would be a terrible thing to do to him. He would have to come here from Boston and then get himself in bad with one union or the other. That is one reason why I concluded I should take him off this hook and let the Board select a man.

* * * * *

The Court: I will not issue a temporary restraining order. I will issue a temporary injunction.

Mr. McEwen: We agree to that.

The Court: You have asked for some affirmative relief. You did not want the matter to be finally determined. I am just stating that you are privileged to appeal my decision. I don't know what the engineers will do. If you can find a man who is foolish enough to accept this arbitration, and the engineers will agree, I don't see any reason why the carrier shouldn't agree.

* * * * *

The Court: I am not going to require anyone to make a determination now. In view of that fact, no one other than the carrier will be required to put up a bond. Do you have a form of injunction that is appropriate?

* * * * *

The Court: When do you want this to go into effect?

Mr. Kester: Well, I assume there will be no problem of a strike between now and the time that the Court could sign the order. I can present the order sometime Monday.

The Court: I will issue the injunction right now. I will enjoin the members of the BLF&E from striking or

counseling a strike or engaging in a slowdown. Then Monday morning, if you will present the order, I will sign it. But, I think it would be advisable to show it to Mr. McEwen and Mr. Richardson first. Maybe they will have no objection.

Mr. Kester: As soon as I can get the necessary typing done, I will give copies to counsel. Your Honor, it may be in the afternoon.

Mr. Richardson: I assume from what the Court has said, the BLE is free now to ask the carrier to implement the February 15, 1968, agreement?

The Court: What do you mean by implement?

Mr. Richardson: Well, you will recall, in view of what the Court has said on Thursday when we were thinking about presenting the controversy to Mr. Hanlon, the Court hasn't signed any restraining order, as I understand it, at all. The full effect of the agreement was stayed at the time they recalled this bulletin.

The Court: They can issue the bulletin.

Mr. Richardson: That's what I mean. We can proceed as soon as reasonably practical with the implementation of the agreement.

The Court: Yes.

* * * * *

The Court: All right. Then if there is nothing else, we will recess until Monday morning at 9:00.

(Whereupon the afternoon adjournment occurred.)

**PRELIMINARY INJUNCTION.**

This cause came on for hearing on the 29th day of February, 1968, and continued thereafter until and including the 2nd day of March, 1968, upon the Order to Show Cause entered herein on the 27th day of February, 1968. Plaintiff appeared by its attorneys, defendant Brotherhood of Locomotive Firemen and Enginemen (herein referred to as BLF&E) appeared by its attorney, certain of the individual defendants appeared by their attorney, and intervenor, Brotherhood of Locomotive Engineers (hereinafter referred to as BLE) appeared by its attorney. The court considered the allegations of the verified complaint, the affidavit of N. B. Beckley, and testimony and other matters presented by the respective parties; and it was stipulated that the cause should be deemed to be submitted on plaintiff's motion for a preliminary injunction. Based thereon, the court now finds:

(1) The court has jurisdiction of the parties and of the subject matter,

(2) Defendants have threatened to commence a strike against plaintiff's railroad at such time as plaintiff and intervenor place into effect their agreement dated February 15, 1968 providing for a five-day work week for yard service engineers;

(3) The controversy over which said strike is threatened is a minor dispute within the meaning of the Railway Labor Act; it is within the exclusive jurisdiction of the National Railroad Adjustment Board; it has been submitted to and is now pending before said Board; and a strike over said matter is therefore unlawful;

(4) Such a strike would stop all of plaintiff's rail operations in its Oregon Division and would impair rail operations on the rest of plaintiff's system; it would cause immediate and substantial damage to plaintiff, much of

which would be irreparable and not compensable in money; and such a strike would also be contrary to the public interest and to the national welfare in that it would interfere with rail transportation over a wide area, within and between the states, and it would impede the transportation of persons and property, thereby damaging passengers, shippers and consignees of plaintiff and of connecting carriers and the public generally.

(5) Greater injury would be inflicted upon plaintiff if injunctive relief were denied than would be inflicted upon defendants if such relief were granted;

(6) It would not be equitable to require that effectiveness of said agreement of February 15, 1968 be postponed as a condition of the issuance of this injunction.

Now, therefore, it is hereby ORDERED that defendants and each of them, and all officers, agents and members of defendant BLF&E and its local lodges, and all persons acting in concert or participating with them, or any of them, are hereby RESTRAINED and ENJOINED until further order of this court, from:

(a) Calling, authorizing, encouraging, commencing, continuing or participating in any strike, work stoppage, slow down, cessation of work or other collective or concerted action designed to interrupt, retard or in any way to impair the operation of trains or the transportation of passengers or property on plaintiff's railroad lines or any part thereof, including calling, authorizing, encouraging, commencing, continuing or participating in any collective or concerted action in laying off or attempting to lay off allegedly on account of sickness or refusing or failing to report for work by reason of alleged sickness;

(b) Picketing, bannering or sign-posting any premises on which plaintiff conducts its railroad business or operations;

(c) Interfering with ingress to or egress from such premises;

(d) In any manner interfering with or affecting the orderly continuance of work on plaintiff's railroad lines or inducing or endeavoring to induce any person employed by the plaintiff from performing his work and duties and from in any manner endeavoring to induce any such employee to desist therefrom;

(e) Inducing, individually or collectively, any other employee or class or group of employees of the plaintiff to perform any of the foregoing acts;

(f) Attempting to cause others to refrain from doing business with plaintiff;

(g) Taking any action which would interfere with this court's jurisdiction in the premises.

And it is further ORDERED that the members of defendant union and all persons in the class or craft represented by it, insofar as they are acting in concert with respect to the matters involved in this case, are hereby directed to continue their normal employment for plaintiff railroad; PROVIDED, however, that nothing herein shall be construed to require an individual employee, not acting in concert with others, to render labor or service without his consent or to make the quitting of his labor or service by an individual employee an illegal act;

And it is further ORDERED that defendant BLF&E, its local lodges, and its officers, agents, servants and employees, shall issue such instructions to their members as shall be necessary to insure compliance with this Order.

It is further ORDERED that plaintiff give security in the sum of $10,000.00 for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or re-

strained by this Order; and plaintiff having tendered a surety bond in that amount, the same is hereby approved;

It is further ORDERED that this cause remain pending upon the remaining issues, until further order of this court.

And it is further ORDERED that copies of this Order be served upon such of the defendants as are within the jurisdiction of this court and have not entered their appearance herein, and that such service may be made by any person over the age of 21 years who is not a party to the action.

Done and Issued at Portland, Oregon, this 4th day of March, 1968, at 12 o'clock noon.

(Sgd.) GUS J. SOLOMON, *Judge.*